RealNetworks Inc v. MLB Advanced Media LP Doc. 33

Hon. Franklin D. Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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| REALNETWORKS, INC., a Washington corporation,<br><br>Plaintiff,<br><br>vs.<br><br>MLB ADVANCED MEDIA, L.P., a Delaware limited partnership<br><br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. CV04-0511FDB<br><br>DEFENDANT MLB ADVANCED MEDIA, L.P.'s INITIAL DISCLOSURES UNDER FEDERAL RULE OF CIVIL PROCEDURE 26(a) |

Defendant MLB Advanced Media, L.P. ("MLBAM") makes the following initial disclosures pursuant to Rule 26(a). These disclosures are not intended, and should not be construed, as a waiver of any objection to the production, use, or admission into evidence of any document or information that MLBAM may be legally entitled to assert during the discovery or trial of this action. In addition, MLBAM expressly reserves the right to identify additional individuals and/or documents as investigation and discovery are ongoing.

A. Individuals.

The following persons are likely to have discoverable knowledge relevant to this lawsuit:

FOLEY & LARDNER LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
(414) 271-2400/Fax: (414) 297-4900

Dockets.Justia.com

Todd Albertsone
Associate General Counsel
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Mr. Albertsone may have knowledge regarding the parties' negotiations and contract terms.

Bob Bowman
President & Chief Executive Officer
MLB Advanced Media, L.P.
75 Ninth Avenue
New York, New York 10011
(212) 485-3444

Mr. Bowman may have knowledge regarding the parties' negotiations and contract terms, the parties' performance under the terms of the "First Agreement" and the February 2004 email exchange, industry practice with respect to streaming media and broadcasting contracts, advertisements and/or promotions by RealNetworks with respect to an affiliation with MLB and MLB games and other MLB content, MLBAM's rights to use, license others to use and exploit MLB games and other content through interactive media, MLBAM's rights to use, license others to use and enforce the trademarks and logos of MLBAM and other MLB entities, damages to MLBAM caused by RealNetworks unauthorized use of MLB content, names and logos.

Craig Chamides
Broadcast Operations Manager
MLB Advanced Media, L.P.
75 Ninth Avenue
New York, NY 10011
(212) 485-3444

Mr. Chamides may have knowledge about the parties' performance under the terms of the February 2004 email exchange.

FOLEY & LARDNER LLP
777 East Wisconsin Avenue
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(414) 271-2400/Fax: (414) 297-4900

Greg Chiemingo
Senior Director, Strategic Projects
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Mr. Chiemingo may have knowledge regarding press releases drafted and/or finalized regarding the parties' relationship.

Joe Choti
MLB Advanced Media, L.P.
75 Ninth Avenue
New York, NY 10011
(212) 485-3444

Mr. Choti may have knowledge regarding the parties' performance under the terms of the "First Agreement" and the February 2004 email exchange.

Matt Dyckman
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Mr. Dyckman may have knowledge regarding the parties' performance under the terms of the "First Agreement" and the February 2004 email exchange.

Jim Gallagher
MLB Advanced Media, L.P.
75 Ninth Avenue
New York, NY 10011
(212) 485-3444

Mr. Gallagher may have knowledge regarding press releases drafted and/or finalized regarding the parties' relationship.

Rob Glaser
Chief Executive Officer
RealNetworks, Inc.

2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Mr. Glaser may have knowledge regarding the parties' negotiations and contract terms.

Lawrence Jacobson
Former President
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Mr. Jacobson may have knowledge regarding the parties' negotiations and contract terms.

George Kliavkoff
Senior V.P. of Business Development
MLB Advanced Media, L.P.
75 Ninth Avenue
New York, NY 10011
(212) 485-3452

Mr. Kliavkoff may have knowledge regarding the parties' negotiations and contract terms.

Michael Mellis
General Counsel
MLB Advanced Media, L.P.
75 Ninth Avenue
New York, NY 10011
(212) 485-3452

Mr. Mellis may have knowledge regarding the parties' negotiations and contract terms, MLBAM's rights to use, license others to use and exploit MLB games and other content through interactive media, MLBAM's rights to use, license others to use and enforce the trademarks and logos of MLBAM and other MLB entities.

Michael Sapherstein
Legal Counsel
MLB Advanced Media, L.P.
75 Ninth Avenue

New York, NY 10011
(212) 485-3444

Mr. Sapherstein may have knowledge regarding the parties' negotiations and contract terms and RealNetworks' unauthorized use of MLB trademarks, logos and content.

Erika Shaffer
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Ms. Shaffer may have knowledge regarding press releases drafted and/or finalized regarding the parties' relationship.

Carla Stratford
Senior Vice President – North American Sales
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Ms. Stratford may have knowledge regarding the parties' negotiations and contract terms.

Bill Way
Associate General Counsel
RealNetworks, Inc.
2601 Elliott Avenue
Seattle, Washington 98121
(206) 674-2700

Mr. Way may have knowledge regarding the parties' negotiations and contract terms.

Richard Wolpert
Chief Strategy Officer
RealNetworks, Inc.
2601 Elliott Avenue
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Mr. Wolpert may have knowledge regarding the parties' negotiations and contract terms.

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B. Documents.

MLBAM will produce, in accordance with procedures under Rule 34, the documents within the following categories:

1. Correspondence regarding the parties' negotiations of the streaming media service agreements, internet media service agreements. and draft and final press releases.

2. Draft and final press releases regarding the parties' relationship.

3. Internet screenshots from Real.com and Japan.real.com depicting RealNetworks' unauthorized use of MLB logos, trademarks and content.

4. Internet screenshots depicting RealNetworks' unauthorized pop-up advertisements that appear while MLB content is displayed.

5. Contracts and addendums (draft and final) between the parties regarding streaming media service agreements, and internet media service agreements.

6. Contract documents concerning, referring to and/or regarding: radio broadcasts of spring training, regular season, and/or post-season MLB games; television broadcasts of spring training, regular season, and/or post-season MLB games.

7. Advertisements and/or promotions by RealNetworks concerning, referring to and/or regarding: MLB games and other MLB content; the commercial use of logos and trademarks that MLBAM has the rights to enforce.

8. Documents, articles, press releases and periodicals concerning, referring to and/or regarding: the 2004 MLB season; the distinction between spring training, regular season, and post-season games, and the products offered by RealNetworks.

Many of the documents contain confidential and proprietary information and will be produced only after entry of a Protective Order, as contemplated by the Court's Order of March 26, 2004.

C. Computation of Damages.

MLBAM is not able to compute its damages until it has conducted discovery.

D. Insurance Agreements.

MLBAM has not, at present, identified any insurance agreements applicable to this action.

Although MLBAM has made a good faith effort to comply with the requirements of Rule 26(a), it reserves the right to supplement this disclosure as additional information as materials

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become available and it further reserves the right to utilize any witnesses and/or documents identified by the defendant in its disclosures.

DATED this __30th___ day of __June_____ 2004.

FOLEY & LARDNER LLP

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ATTORNEYS FOR DEFENDANT
MLB ADVANCED MEDIA, L.P.

## CERTIFICATE OF SERVICE

I do hereby certify that on this __30th___ day of ____June_____, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Ralph H. Palumbo, Lynn M. Engel, Denise L. Ashbaugh, attorneys for plaintiff, RealNetworks, Inc.

DATED this _30th____ day of ___June_____, 2004.

FOLEY & LARDNER LLP

s/ Mary K. Braza (*admitted Pro Hac Vice*)
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